

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WACHOVIA BANK, N.A., a National)	
Banking Association,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-06-0263-F
)	
THE BANK OF OKLAHOMA, N.A.,)	
a National Banking Association, and)	
DELL-STAR TECHNOLOGIES, INC.,)	
an Oklahoma corporation,)	
)	
Defendants.)	

ORDER

Defendant Dell-Star Technologies, Inc.’s Motion to Vacate Entry of Judgment, filed May 5, 2006, is before the court. (Doc. no. 22.) The motion states that The Bank of Oklahoma has no objection to the motion. Plaintiff Wachovia Bank has objected to the motion. Accordingly, the motion is ready for determination.

The motion is brought under Rules 55(c) and 60(b), Fed. R. Civ. P. It asks the court to vacate the clerk’s entry of default, which was entered in this case on April 21, 2006. (Entry of default at doc. no. 19.) At that time, the clerk entered Dell-Star Technologies’ default under Rule 55(a), Fed. R. Civ. P., certifying that the records revealed no answer, appearance or response to the Complaint within the time required and stating that Dell-Star was then in default.

Rule 55(c) provides that the court may set aside an entry of default “for good cause shown.” In its moving brief, Dell-Star states that its officers are “frequently engaged in business and associated travel outside the United States.” The clear suggestion is that it is these facts which explain Dell-Star’s neglect of the answer date

in this action because Dell-Star then states that “due to excusable neglect Dell-Star failed to docket the date within which to file its Answer.” Dell-Star also states that “[i]t was only recently made aware of the Entry of Default, and as a result immediately retained...counsel.” (Moving brief, p. 3.)

The court agrees with plaintiff that the much better practice would have been for Dell-Star to provide a detailed affidavit regarding the manner in which the answer date came to be overlooked. With no affidavit having been filed, and given the scant amount of information provided in the moving brief, Dell-Star’s statement that the default was the result of “excusable neglect” is little more than an unsupported legal conclusion.

Nevertheless, the court finds and concludes that in the circumstances of this case, the representations contained in the moving brief provide sufficient good cause to vacate the entry of default. Those circumstances include the lack of delay or other prejudice to plaintiff (other than the fact that the entry of default will be vacated, a prejudice which necessarily exists whenever a favorable order is vacated); the fact that this action was filed just a little over two months ago (on March 14, 2006) and has not yet been put on a schedule; the lack of any objection to the motion from the Bank of Oklahoma; the fact that the clerk’s entry of default is merely a ministerial order of the clerk stating that Dell-Star was in default as of April 21, 2006; and the fact that no default judgment has yet been entered by the court.¹ In these circumstances, the court concludes that the interests of justice require it to vacate the clerk’s entry of default.


Accordingly, in the careful exercise of its discretion, and after consideration of the parties’ submissions, the record, and the authorities, the motion to vacate is **GRANTED**. The clerk’s entry of judgment of April 21, 2006 is **VACATED**. Dell-

¹Default judgments are disfavored. Pelican Production Corp. v. Marino, 893 F.2d 1143, 1146 (10th Cir. 1990).

Star Technologies, Inc. is **GRANTED** ten days from the date of this order within which to move or answer.

A related motion, "Plaintiff Wachovia Bank, N.A.'s Motion for Default Judgment Against Defendant Dell-Star Technologies, Inc.," filed April 20, 2006, is also pending. (Doc. no. 16.) As the clerk's entry of default has now been vacated, plaintiff's motion for default judgment is **STRICKEN** as moot.

Dated this 22nd day of May, 2006.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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